

III. Remarks:

In response to the examiner's concerns, the Applicant replies as follows:

Examiner's Novelty Concerns: The examiner expressed 35 USC §102 novelty concerns as to claims 1, 2, 5, 7-9, 12, 19, 23, 31, 32, 35, 38 and 101 based on US Pat. No. 6,333,733 (referred to herein as the Andersson patent). The patentability of independent claims 1, 31 and 101 are independent claims and will be addressed explicitly below. New independent claims 121 and 136 will also be addressed below.

Response to Novelty Concerns:

Claim 1 (and dependents): The examiner expressed novelty concerns relative to independent claim 1 and dependents. The examiner indicated that claims 13 and claims that depend therefrom would be allowable if rewritten in independent form to incorporate all the limits of its base independent claim (claim 1) and any intervening claims. The Applicant has done so by incorporating the limits of claim 13 (and intervening claim 12) into claim 1. As such, claim 1, as amended below, is essentially claim 13 in independent form and should thus be allowable. Applicant indicates that certain other amendments made herein to claim 1 were made to clarify the description of the subject matter. Further, because claim 1 is now allowable, claims that depend therefrom - 2, 5, 7-9, 12, 14, 15, 18, 19, 23 and 24 – are also now allowable.

Claim 31 (and dependents): The examiner expressed novelty concerns relative to claim 31 and dependents as based on the Andersson patent. In response, the Applicant would first explain that claim 31, as amended herein, includes a reflector that itself has “multiple reflective facets.” However, the Andersson patent simply does not disclose a reflector that includes “multiple reflective facets”, where such reflector and the radiation source are movable relative to each other as claim 31 requires (i.e., where either: (a) the reflector is movable relative to a stationary radiation source; (b) the radiation source is movable relative to a stationary reflector; or (c) neither the radiation source nor the reflector is

stationary and each is physically movable relative to the other). Simply, even if the passage of the Andersson patent at col. 8, l. 59-62 that discloses “reflectors” (plural) is considered disclosure of “multiple reflector facets” (the Applicant makes no comment whatsoever as to whether this is indeed the case), such “reflective facets”, which are disclosed only in association with the radiation source (and, importantly, not associated with any detector of the Andersson patent’s device) are not part of a system where the reflector(s) and the radiation source are movable relative to each other. The reflectors of the Andersson reference are designed merely to cast light from a single source onto a plurality of screens; such reflectors are stationary relative to the radiation source (and the radiation source is stationary relative to the reflectors). Thus, the only possible disclosure in Andersson of a reflector that is movable relative to a radiation source is where the reflector is part of Andersson’s detector, and in such design, the reflector does not include “multiple reflective facets” as claim 31 requires. As such, there is no disclosure in the Andersson reference of the limits of claim 31 as amended herein.

Claim 101: Upon review of the Andersson patent, it may, in relevant manner, and upon a generous reading allowed for the sake of this argument, disclose either one of two features: either (1) a “finger operable first portion at least quiaxially movably connected to a second portion” (see Fig. 5 of Andersson); or (2) a “hand operable second portion at least uniaxially movably connected to a third portion” (see Fig. 3 of Andersson). However, it cannot, regardless of how generous a reading, be fairly said to disclose both, and because both are elements of claim 101, Andersson cannot be said to disclose the subject matter of claim 101.

New Claim 121: Andersson does not disclose the following limitations of claim 121: “an internal reflective element established: (a) so that said input causes movement of said internal reflective element relative to a radiation source; and (b) to receive input independent radiation from said radiation source.” Andersson, at col. 3, l. 18-24; and col. 5, l. 29-30; and col. 8, l. 59-62, discloses two different designs that include a reflector(s): (1) a first design where the reflector(s) receives input independent radiation from the radiation source; and (2) a second design where the reflector is part of the detector and

receives radiation whose character (intensity, etc.) depends on device input, and which is therefore not input independent. In an example of the first design, the reflector receives input independent radiation (during operation of the Andersson device, the radiation received by the reflectors of design 1 is the same and thus “input independent”), and the reflector and the radiation source are not movable relative to each other. In an example of the second design, hand motion input from an operator moves the position of the screen such that the screen adjusts radiation, thereby creating input dependent radiation that is, after such screening, received by the reflector. Applicant concedes that in particular embodiments of Andersson’s second design, the reflector and the radiation source may, upon a generous reading adopted for sake of argument (and without raising the aspect of enablement of the Andersson disclosure), be said to be movable relative to each other. Thus, neither one of the two aforementioned Andersson designs disclose both (a) and (b) of claim 121 as amended. As such, Andersson cannot be said to disclose the subject matter of claim 121, as amended.

New Claim 136: Because the term “annular reflective element” of claim 24 prompted an obviousness rejection based on the Andersson and Noll patents, and because new claim 136 includes the term “annular reflective element”, the Applicant feels compelled to explain, in anticipatory fashion, and to obviate a similar §103 concern, why new claim 136 is not obvious relative to the Andersson and Noll patents.

The Applicant submits that new independent claim 136 (and its dependent claim, claim 137) are not *prima facie* obvious. As the Examiner is well aware, “[T]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” MPEP 2142. The MPEP goes on to state that “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” MPEP 2143, Basic Requirements of a *Prima Facie* Case of

Obviousness. Assignee submits that these three criteria can not be met with respect to the 35 U.S.C §103 and explains its position as follows:

Simply, neither the Andersson patent nor the Noll patent discloses any sort of annular reflector whatsoever, nor any sort of reflector that is “established so as to surround [the] radiation source”. As the examiner understands, given comments in the office action, the Andersson patent does not disclose an annular reflective element. But, the Noll reference also does not disclose an annular reflective element, because the term annular means ring (or substantially a ring), and the curved component 3 of Figs. 1 and 2 amounts to only 1/3 of a ring or so. Further, there is no reflector in either the Andersson or Noll patents that surrounds the radiation source. The only things that do appear to surround (a term that does not require comprehensive disclosure, as indeed “equatorial” coverage alone, as found in a belt around a waist, amounts to surrounding) in each Andersson and Noll are housings. However, there is never a suggestion in any of the patent references to establish a reflector in a manner similar to any housing configuration; indeed to do so would result in inoperability of the apparatus. As such, the Andersson and Noll references cannot be validly used to support a §103 rejection of claim 136 (and its dependent, claim 137).

Examiner’s Obviousness Concerns: The examiner expressed 35 USC §103 obviousness concerns as to claim 24 based on the Andersson reference and US Pat. No. 6,545,662 (referred to herein as the Noll patent).

Response to Obviousness Concerns: Claim 24 depends from claim 1, and, as explained above, claim 1 has been amended to resolve all substantive concerns (novelty and/or obviousness) that the examiner expressed relative to it. As such, claim 24 should be now be allowable. Again, this is based on the well-established rule that claims that depend from an independent claim that has been amended to resolve all §102 and §103 concerns should also be substantively allowable.

Examiner’s Claim Objections: The examiner objected to claims 13-15 and 17 as being

dependent upon a rejected base claim, but indicated that they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Examiner's Claim Objections: In response, the Applicant has incorporated the limitations of claim 13 into claim 1. Claim 13 has therefore been canceled; Claim 1 and all claims that depend therefrom, including claims 14, 15 and 17, are therefore in allowable condition.

Additional Information:

The amendments submitted herein should be understood to be made as a practicality only, and should not to be construed as creating any situation of file wrapper estoppel or the like as all rights are expressly reserved and may be pursued in this or other applications, such as divisionals, continuations, or continuations-in-part if desired. Relatedly, it should be understood that the amendments made herein are made for tangential issues of clarity and as a matter of the Office's convenience or expedience only. The amendments should not be interpreted as an action that in any way surrenders a particular equivalency, surrenders any right to patent coverage, or otherwise limits any rights which the Assignee may now or hereafter assert. It should be understood that, unless and to the extent deemed broadened by this amendment, and even as amended, the Applicant expressly reserves all rights, including but not limited to: all rights to maintain the scope of literal coverage with respect to any element as may have existed under the language previously presented, all rights to maintain the scope of equivalency coverage as may have existed under the language previously presented, and all rights to re-present the prior language at any time in this or any subsequent application. To the extent currently foreseeable, no change or reduction in direct or equivalency coverage is believed to exist, and no change or reduction in direct or equivalency coverage is intended through the presentation of this amendment.

Further, the office and any third persons interested in potential scope of this or

subsequent applications should understand that broader claims may be presented at a later date in this or a continuation in spite of any preliminary amendments, other amendments, claim language, or arguments presented, thus there is not intention to disclaim or surrender any potential subject matter. It should be understood that such broader claims may require that any relevant prior art that may have been considered may need to be re-visited since it is possible that to the extent any amendments, claim language, or arguments presented in this application are considered as made to avoid such prior art, such reasons may be eliminated by later presented claims or the like. Both the examiner and any person otherwise interested in existing or later coverage or considering the possibility of an indication of disclaimer or surrender of potential coverage, should be aware that no such surrender or disclaimer is intended or exists in this application. Limitations such as arose in *Hakim v. Cannon Avent Group, PLC*, 479 F.3d 1313 (Fed. Cir 2007), or the like are expressly not intended in this or any subsequent matter related.

IV. Conclusion:

For the above reasons, the Assignee would submit that the Office's novelty and obviousness concerns are inappropriate. An allowance of the claims at the examiner's earliest convenience is requested.

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Respectfully submitted,

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